IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 296 OF 2004.

Dhondibhau Baburao Thakur & another. ... Appellants.
Versus.
Smt.Shaoubai Bhatwan Bandal.
and others. ... Respondents.

Shri G.S.Godbole and Shri R.D.Barve for the Appellants.
Shri P.B.Shah with Shri Vivek Salunkhe for the
Respondent No.1.

CORAM : ABHAY S.OKA, J.
DATED : 19th April, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Second Appeal is by the original Defendant Nos.2 and 3. The decree for perpetual injunction was passed by the trial Court against all the Defendants. In an appeal preferred before the First Appellate Court, the decree has been confirmed as against the original Defendants Nos.2 to 5.

2. Shri Godbole appearing for the Appellant submitted that the sale deed on the basis of which Respondent No.1/Plaintiff claims to have purchased the property indicates that Respondent No.1 purchased 1/2 undivided share in the larger property bearing Gat No.8. He submitted that the finding of possession in favour of the Respondent No.1 recorded by the Appellate Court is based only on preponderance of probabilities. He submitted that the reliance placed on the admission of Defendant No.1 will not help the Respondent No.1 as the Defendant No.1 has sold the entire property long back. He submitted that the document of title of Respondent

No.1 does not reflect possession of the Respondent No.1 over a particular portion of the larger property. Shri Shah appearing for Respondent No.1 supported the Judgments and decrees passed by the Courts below.

3. I have considered the submissions. It is pertinent to note that the Defendant No.1, who is the vendor of the present Appellants was examined by the present Appellants as their witness. The Courts below have relied upon the categorical admission given by Defendant No.1 as regards the possession of the predecessor-in-title of the Respondent No.1 of a specific 1/2 portion on the southern side of the suit land bearing Gat No.8. The Defendant No.1 was examined by the Appellants and therefore, now the Appellants cannot contend that the clear admissions given by the Defendant No.1 should be ignored. The Appellants are claiming through Defendant No.1.

4. If the Courts below have relied upon the categorical admission given by Defendant No.1 for coming to the conclusion that the Respondent No.1 was in possession of the specific portion of the suit property, no fault can be found with the said approach. No substantial question of law arises in the Second Appeal. The Second Appeal is accordingly dismissed with no order as to costs.

Judge.